

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On its Own Motion	:	
	:	
Certification Requirements Applicable to	:	12-0212
Vendors that Install Electric Vehicle	:	
Charging Stations	:	
	:	

REPLY BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief On Exceptions (“RBOE”). Staff recommends that the Commission enter the Administrative Law Judge’s Proposed Order, as written with minor modifications described below. The omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff’s Brief on Exceptions (“BOE”).

I. BACKGROUND

On October 31, 2011, Public Act 97-0616 (“PA 97-0616”) became effective. Among other things, PA 97-0616 added Section 16-128A to the Public Utilities Act (“Act”). Section 16-128A was subsequently amended by Public Act 97-1128 on August 28, 2012. Section 16-128A(d) requires the Commission to establish certification rules applicable to installers, maintainers and repairers of EV charging stations: “Within 180 days after the effective date of this amendatory Act of the 97th General Assembly, the

Commission shall initiate a rulemaking proceeding to establish certification requirements that shall be applicable to persons or entities that install, maintain, or repair electric vehicle charging stations.” 220 ILCS 5/16-128A(d).

On March 12, 2012, Staff filed a report recommending that the Commission open a rulemaking proceeding to adopt EV charging station certification rules. The Commission opened the proceeding on March 21, 2012.

Staff drafted and solicited written comments on an initial proposed certification rule that Staff refers to as the “IMR Rule” (i.e., “Installer, Maintainer, and Repairer Rule”). Staff then convened three workshops to discuss the written comments and subsequently revise draft rules.

In response to the first notice rule for 83 Ill. Adm. Code 469 published in the Illinois Register on November 26, 2012, on January 10, 2013, ComEd, AIC, ABC, and the Chamber each submitted comments. On January 17, 2013, IBEW and Staff each submitted reply comments. Thereafter, the Administrative Law Judge (“ALJ”) issued a ruling on February 21, 2013 directing Staff to provide language for the rule satisfying the requirements of Section 16-128A(d)(12) of the Act. Neither the first notice rule nor any of the comments addressed the requirements of subsection (d)(12). Staff offered language in response to the ruling on March 1, 2013. The February 21, 2013 ruling encouraged other parties to offer language as well and provided an opportunity for parties to respond to Staff's language, but none chose to avail themselves of these opportunities. A Proposed Second Notice Order (“PO”) was served on the parties on March 14, 2013. The parties were given leave to file Briefs on Exceptions and Reply to Exceptions by March 28, 2013 and April 4, 2013 respectively.

II. EXCEPTIONS

A. Response to IBEW

The International Brotherhood of Electrical Workers (“IBEW”) confines its Brief on Exceptions to a discussion of the various Sections of the rule where the term “Qualified person” (“QP”) appears, which includes Sections 469.10 (Definitions), 469.40 (Required Application Information), and 469.50 (Certification Requirements). The IBEW recommends changes to each of these Sections. In comparison to the Proposed Second Notice Order (PSNO”), if adopted, the IBEW’s recommendations would significantly increase the training and experience required for a person to be designated a QP and would also likely reduce the number of current EV installers able to attain status as a QP.

a. Section 469.10 (Definitions)

Under Section 469.10, the definition section in the PSNO, there are two ways for a person to become a QP. A person can: (1) satisfactorily complete five EV charging station installations; or (2) complete a training program offered by the Department of Labor (“DOL”) or Underwriters Laboratory (“UL”), that includes lab or field work.

The IBEW recommends rejecting the five installation option and the option under which a person could become a QP by completing a UL training program. The IBEW recommends retaining the DOL option. The IBEW also recommends an alternative under which a person could be designated a QP by completing 8,000 hours of training and experience, and receiving a certificate attesting to completion of a training program from either the DOL or the Electric Vehicle Installer Training Program (“EVITP”). (IBEW BOE, Appendix)

The IBEW offers two arguments opposing the five installation option. First, the IBEW states that since no party recommended a standard for determining the “number of installations”, the Commission should not adopt one. Second, the IBEW states that the statute requires a “years of employment” standard. (IBEW BOE, pp. 3-4)

Staff finds the PSNO’s arguments for adoption of the five installation option to be compelling and recommends that the five installation option be included in the rule. The PSNO recognizes that the EV rulemaking is similar to the just-adopted rule (Ill. Adm. Code Part 468) governing the licensing of installers of distributed generation facilities. Under Part 468, a person can attain QP status by successfully completing five installations. While it may be true that no party offered a specific number of installations standard in this rulemaking, Staff, as a party in both rulemakings, finds the installation activities for which licensing is required in proposed Part 469 and Ill. Adm. Code Part 468 to be so comparable as to warrant similar licensing requirements.

As additional support for the five installation standard, the PSNO finds that an undefined “number of installations” standard would constitute a higher standard than what Section 16-128(a) of the Act requires (*i.e.*, a “specified and several years of employment” standard). (PSNO, p. 7) Staff agrees with this assessment and notes that as the EV market is still in the formative stage, a “years of employment standard” would be of little practical use to prospective installers.

The PSNO also recognizes that some individuals may have obtained adequate experience outside of recognized training programs and such persons should not be restricted from the marketplace. (*Id.*) Staff agrees that at least some current installers likely have obtained training from sources other than the recognized training programs

in the PSNO – including, perhaps, on-the-job training – and that installers who have demonstrated a sufficient level of competence should not be precluded from continuing to work in the EV charging station industry. Finally, the IBEW claims that although the Commission is free to establish a “years of employment” standard it may not establish a “number of installations” standard. IBEW supports this position by arguing that “due to a lack of factual certainty” the UL certification and the number of installations standards are “not base upon substantial evidence, or, in fact, any evidence.” (IBEW BOE, p. 3) The IBEW is simply wrong.

Substantial record evidence does not require factual certainty. Substantial evidence need be only such evidence that a “reasoning mind would accept as sufficient to support a particular conclusion.” *People ex rel. Madigan v. Illinois Commerce Com’n*, 964 N.E.2d 510, 516 (1st Dist. 2011). In fact, the substantial evidence standard may be met even if the evidence supports more than one possible conclusion. *Illinois Bell Telephone Co. v. Illinois Commerce Com’n*, 816 N.E.2d 379, 386 (3rd Dist. 2004). Also, in the absence of any specific evidence on the number of years that is most appropriate, the Commission may make a pragmatic decision and choose the specific number of years. See *DuPage Utility Co. v. Illinois Commerce Commission*, 47 Ill. 2d 550, 560 (1971). If the Commission, however, feels that there is not substantial evidence in this record, it need only look to the record in Docket No. 12-0213.

In this proceeding’s sister docket, Docket No. 12-0213, which has the same Section 16-128(a) requirements for “qualified persons” as this proceeding, the record is chock-full of opinion and support for the “number of installations” standards, including specific recommended number of installations. The Commission may take

administrative notice of the 12-0213 record, including public comments, to have substantial record evidence. Section 200.640 of the Commissions rules of procedure, entitled Administrative Notice, specifically provide for the notice of the 12-0213 record, including the public comments:

a) Consistent with Section 200.610, the Commission or Hearing Examiner may take administrative notice of the following:

* * *

2) Contents of certificates, permits and licenses issued by the Commission, and the orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed Commission proceedings.

83 Ill. Admin. Code Part 200.160(a)(2).

Further, under the Illinois appellate court's recent decision in *Apple Canyon v. Ill. Commerce Comm'n*, 2013 IL App (3) 100832 (Ill. App. 3d Dist. 2013) ("*Apple Canyon*") the Court concluded that public comments are a part of the record for decision, albeit not evidence. (See *Apple Canyon*, ¶ 41) Accordingly, the Commission may take Administrative Notice of the record, and the public comments, in Docket No. 12-0213 and rely on that notice to provide more evidence in support of its position of "Qualified Persons" in this proceeding. For these reasons, Staff supports the adoption of the five installation standard.

With respect to the IBEW's 8,000 hours of training alternative, Staff believes that such an option would greatly and unduly restrict the number of individuals that could be designated as QPs. The IBEW identifies the 8,000 hours training requirement as commensurate with the DOL-registered training program. (IBEW BOE, p. 4) However, in terms of time, the 8,000 hours requirement is little different from the DOL-training program requirement and thus does not constitute an easier path to QP status

compared to the DOL-registered training option. Staff recommends that the 8,000 hour alternative option not be adopted.

Finally, Staff appreciates that the IBEW has identified the Electric Vehicle Infrastructure Training Program's ("EVITP") training and certificate program as legitimate and reputable. After a review of the information provided on EVITP's website (<http://www.evitp.org>), Staff agrees that the EVITP's training program and certificate could be included in the rule. To ensure that a prospective QP has some electrical experience, Staff recommends that to qualify as a QP, only electrical contractors should be permitted to use this training program option.

Accordingly, Staff recommends the following definition of Qualified person be adopted:

ALJ PSNO, pp. 7-8.

Qualified person" means a person who performs installation, maintenance or repair of electric vehicle charging stations and who ~~either~~ (1) has satisfactorily completed at least five installations of an electric vehicle charging station or (2) ~~has completed at least one of the following programs requiring lab and field work and received a certificate of satisfactory completion~~ (1) an apprenticeship as a journeyman electrician from a United States Department of Labor Registered Electrician Apprenticeship and Training Program ~~and received a certification of satisfactory completion~~ or (3) holds a valid and current electrical contractor's license from at least one municipality in the State of Illinois and has received a certification of satisfactory completion completed from an Underwriters Laboratories (UL) electric vehicle charging station installation certification program or the Electric Vehicle Infrastructure Training Program (EVITP) and received a certification of satisfactory completion.

b. Section 469.40(f)

In Section 460.40(f)(2), IBEW recommends deletion of the phrase "five

installations of electric vehicle charging stations.” In place of that phrase, IBEW recommends insertion of the phrase “8,000 hours of [] combined hands-on electrical work and/or related instruction.” (IBEW BOE, Appendix) For the reasons discussed above in Section 469.10, Staff recommends that IBEW’s recommendation for changes to Section 460.40(f)(2) not be adopted.

c. Section 469.50(d)

This Section requires an applicant to certify that every installation, repair, and maintenance of a charging station will only be performed by QPs. Other persons could also perform as an Installer, Maintainer, and Repairer (“IMR”) under the direct supervision of a QP, including any person enrolled in a training program, which, upon successful completion, would result in the person becoming a QP. (PSNO Appendix, Section 469.50(d))

Staff’s BOE noted that Section 469.50(d)(2) would allow any person – literally, any person – to perform an installation, repairs, or maintenance as long as the person is directly supervised by a QP. Staff is doubtful that the statute envisions that any person, regardless of the extent of their electrical knowledge, could function as an IMR, even under the direct supervision of a QP. Staff recommended that either subsection (d)(2) be deleted or Section 469.50(d) be modified to allow electrical contractors holding a license to perform installations, maintenance and repairs. (Staff BOE, pp. 3-4)

IBEW’s revisions to Section 469.50(d) indicate that it has identified a similar concern. IBEW’s revisions eliminate the option under which any person under the supervision of a QP could work as an IMR. Additionally, the IBEW recommends changing the requirement that calls for a person to be enrolled in a training program that

when completed would result in the person becoming a QP. Instead, the IBEW recommends a more specific requirement – that is, to perform IMR work a person must be enrolled in a DOL-registered electrical apprenticeship training program. (IBEW BOE, Appendix

Staff agrees with IBEW's recommendation to eliminate (or modify) subsection (d)(2) but disagrees with IBEW's recommendation to restore the requirement that a non-QP person performing IMR work must be enrolled in a DOL-registered program. Rather, Staff supports the PSNO's recommendation that a non-qualified person performing IMR work must be enrolled in a training program that upon completion would lead to QP status. As an additional option, and to enlarge the number of persons who can obtain on-the-job training, Staff recommends permitting electrical contractors who have a valid and current license in at least one municipality in the State to do IMR work under the direct supervision of a QP. Thus, for the reasons stated, Staff recommends the following language, with minor changes from the language proposed in Staff's BOE, for Section 469.50(d) be adopted:

ALJ PSNO, p. 13.

- d) The applicant certifies that every installation, maintenance and repair of an electric vehicle charging station will be performed only by:
 - 1) a qualified person; or
 - 2) a person who has a valid and current license as an electrical contractor in at least one municipality in the State of Illinois who is not a qualified person, provided he/she is directly supervised by a qualified person; or
 - 3) a persons enrolled in a training program that upon satisfactory completion will meet the requirement to become a qualified person, DOL-registered electrician apprenticeship program who are provided he/she is directly supervised by a qualified person.

B. Response to ComEd

ComEd's BOE only addresses Section 469.120(a), which lists the information electric utility tariffs must require from each retail customers that owns, uses, operates, or maintains an EV charging station. Under subsection 469.120 (a)(4) the tariffs require retail customers to furnish to the utility the Commission docket number under which the IMR received certification. Instead, ComEd proposes that the tariffs should require "evidence demonstrating that the IMR has been certified from the Commission" rather than the specific "docket number". (ComEd BOE, pp. 1-2) However, it is not obvious to Staff what "other evidence" could easily be provided to establish that the IMR has been certified from the Commission, aside from the docket number. However, Staff could support the following language and recommends that the Commission adopt this language:

ALJ SNPO, p. 22.

469.120(a)(4)

"When an electric vehicle charging station is to be installed by an IMR, evidence, such as the Commission docket number in which the IMR received certification, demonstrating that the IMR ~~obtained a certificate from~~ has been certified by the Commission,"

IV. CONCLUSION

WHEREFORE, Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations consistent with this Reply Brief On Exceptions.

Respectfully submitted,

_____/s/_____
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